

**EXHIBIT 5
(Public)
(Previously File Under Seal as Dkt. 334)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

FAIR ISAAC CORPORATION,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY, and
ACE AMERICAN INSURANCE COMPANY

Defendants.

Case No. 16-CV-1054(WMW/DTS)

**EXPERT REPORT OF
NEIL J. ZOLTOWSKI
WITH RESPECT TO DAMAGES**

Respectfully submitted this 19th day of April, 2019



CONFIDENTIAL – ATTORNEYS' EYES ONLY

EXHIBIT

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Table 4: Summary of Blaze Advisor Applications Infringing Years

Application	Country	Start	End
ADAPT	Australia	2013	2019
ADAPT	U.K.		
EZER	U.K./Europe		
Evolution	Canada		
Broker Site	Canada		
Evolution	Australia	2017	
Exari	U.K.	2013	2016
CSI eXPRESS	U.S.	2016	2019
Automated Renewal			
Profitability Indicator			
Decision Point			
CIS Claims			
Premium Booking			
Cornerstone			
CUW			
IRMA			
TAPS			

C. Defendants' Applications Incorporating Blaze Advisor*i. Domestic Applications**a) Policy Administration Applications*

72. Policy administration applications are used to book, bind and issue insurance policies and to maintain those policies.¹³⁰ These applications are used to create and administer new policies and to renew existing policies. Although I understand that “policy administration application” has a specific connotation in insurance software parlance, I have used the term broadly to describe applications that are used to acquire, assess, price, process, administer and renew insurance policies. Defendants use at least five policy administration applications in the U.S., Australia, Canada, United Kingdom and Europe.

¹³⁰ Mirolyuz 1/11/19 Deposition at 76.

B. Profits from Using and Distributing Blaze Advisor

111. FICO may be entitled to disgorge Defendants' profits from written premiums generated using Blaze Advisor.²²⁸ Between March 31, 2016 and March 2019, Defendants generated gross written premiums in the United States of \$28.4 billion. (See **Schedules 3.0 and 8.0**.) FICO may also be entitled to disgorge the profits from written premiums generated by certain foreign entities that used Blaze Advisor in Canada, Australia, the United Kingdom and certain other European countries between April 2013 and March 2019 of \$2.5 billion. (See **Schedules 3.0 and 9.0**). In total, FICO may be entitled to disgorge the profits from written premiums generated using Blaze Advisor of \$30.9 billion. (See **Schedule 3.0**).

VII. ANALYSIS OF DAMAGES

112. For purposes of my damages analysis, I have assumed that Defendants Federal and ACE American are liable for the causes of action asserted by FICO and as a result of Defendants' actions, FICO has suffered economic harm, and/or Defendants have realized improper economic benefits.

A. Lost FICO Software License, Support, and Maintenance Fees

i. Nature of Defendants' License Agreements

113. The appropriate measure of FICO's lost domestic license fees for the period from March 31, 2016 (i.e., the termination date) to December 2019 (i.e., the trial ready date in this matter) is FICO's annual named-application deployment and development seat license fees for the period each Blaze Advisor application is used without FICO's licensed consent. This is the appropriate measure of loss to FICO because it reflects the value of its software for each year of unlicensed use in each unlicensed application until that use is enjoined.

²²⁸ I understand based on the Copyright Act (17 U.S.C. § 504(b)) that: "In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." As a result, the damages presented related to copyright infringement damages reflect the dollar amounts associated with the gross written premiums through Defendants' allegedly infringing use of Blaze Advisor.

*Fair Isaac Corporation v. Federal Insurance Company and ACE American Insurance Company***SCHEDULE 8.0: Summary of Defendants' Domestic Gross Written Premiums**

<i>March 31, 2016 to March 2019</i>			
Domestic Applications	All Writing Companies (a)	Chubb INA Holdings, Inc. Subsidiaries (b)	Defendants, Subsidiaries and Pooling Entities (c)
Commercial Underwriting Workstation (CUW)	\$ 21,383,446,632	\$ 21,151,270,694	\$ 21,109,818,196
CSI ePRESS (e)	4,325,229,977	4,325,229,977	4,009,182,762
Premium Booking	1,324,107,605	1,324,107,605	1,324,107,605
Texas Accident Prevention System (TAPS)	692,382,681	692,382,681	692,382,681
Cornerstone	576,117,660	576,117,660	548,732,926
Individual Rate Modification Application (IRMA)	271,875,166	271,869,120	248,022,035
Decision Point	13,162,664	13,162,664	13,113,632
TOTAL	\$ 28,586,322,385 (f)	\$ 28,354,140,400 (f)	\$ 27,945,359,837

Note/Source(s):

- (a) See Schedule 10.1.
- (b) See Schedule 10.2.
- (c) See Schedule 10.3.
- (d) Calculated as the difference between (b) and (c).
- (e) I understand the gross written premiums reported for CSI ePRESS includes premiums related to the Automated Renewals Process applications. Further, CSI ePRESS, Automated Renewals Process and Profitability Indicator are all used in connection with the same policies. (Harkin Deposition at 72-74; Federal Insurance Company's Fifth Supplemental Answer to Plaintiff's Interrogatory No. 16 and Plaintiff's Interrogatory No. 17, dated March 21, 2019 at 3-5, 11-13.)
- (f) I understand the difference between All Writing Companies and Chubb INA Holdings, Inc. Subsidiaries primarily relate to gross writing Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company for the CUW application. Both Westchester Chubb INA Holdings, Inc., however I understand Westchester Fire Insurance Company participated in a pool together with the Defendants 13.1 and 16.0.

*Fair Isaac Corporation v. Federal Insurance Company and ACE American Insurance Company***SCHEDULE 9.0: Summary of Defendants' Foreign Gross Written Premiums***April 21, 2013 to March 2019*

Foreign Applications	Region	All Writing Companies (a)	Chubb Corporation and Chubb INA Holdings, Inc. Subsidiaries (b)	Federal, Subsidiaries and Pooling Entities (c)	Non-Subsidiaries and Non-Pooling Entities (d)
ADAPT	Australia	\$ 104,643,020	\$ 104,643,020	\$ 76,090,876	\$ 28,552,143
ADAPT	U.K.	265,034,167	265,034,167	213,529,232	51,504,935
Evolution	Australia	87,984,461	87,984,461	-	87,984,461
Evolution (e)	Canada	1,278,000,000	1,278,000,000	534,000,000	744,000,000
EZER	Europe	786,223,356	786,223,356	672,408,758	113,814,598
EZER	U.K.	15,477	15,477	15,477	-
Broker Site (e)	Canada	n/a	n/a	n/a	n/a
TOTAL		\$ 2,521,900,482	\$ 2,521,900,482	\$ 1,496,044,344	\$ 1,025,856,138

Note/Source(s):

- (a) See Schedule 11.1.
- (b) See Schedule 11.2.
- (c) See Schedule 11.3.
- (d) Calculated as the difference between (b) and (c).
- (e) I understand the Evolution (Canada) and Broker Site (Canada) applications share the same underlying database and therefore report premiums. (Harkin Deposition at 206-209.)